

MHRG030000862020



Reg. Cri. Case No. 83/2020

*Sheshrao Baburao Suryawanshi, Asst. Police
Commissioner, Panvel Vs. Mahesh Ratan Baladi*

CNR No. MHRG030000862020

:: ORDER BELOW EXH. 01 ::

Perused complaint, evidence of the complainant Exh. 19 and documentary evidence. Heard learned A.P.P. and advocate of the accused on the point of framing of charge or to discharge the accused vide section 245(1) of the Code of Criminal Procedure ('the Code' in short).

02. The first objection raised by the accused that the complainant has no authority to lodge complaint as he is below the rank of Deputy Commissioner of Police and as per D.O. of Home department dated 20/07/2015 only the person not below the rank of Deputy Commissioner of Police is a designated authority to launch prosecution by filing complaint under the Act. I have gone thorough the said D.O. of Home department. In it Rule 2(c) of the Noise Pollution (Regulation and Control) Rules, 2000 is referred and said that only the officer not below the rank of Deputy Commissioner of Police are designated authority.

03. As in the said D.O. Rule 2(c) of the Noise Pollution (Regulation and Control) Rules, 2000 is referred to, I would like

to refer the said Rule herein below : -

2(c) *“authority” means and includes any authority or officer authorized by the Central Government, or as the case may be, the State Government in accordance with the laws in force and includes a District Magistrate, Police Commissioner, or any other officer not below the rank of the Deputy Superintendent of Police designated for the maintenance of the ambient air quality standards in respect of noise under any law for the time being in force;*

04. In the said Rule answer to the question that who will be the authority under the said Rule, is given. As per the said Rule authority includes an officer who is not below the rank of Deputy Superintendent of Police. In the D.O. of Home Department referred above, though Rule 2(c) of the Rules is referred but mistakenly mentioned the authority not below the rank of Deputy Commissioner of Police, is designated authority. If there is contradiction in between D.O., Circular etc. the law prescribed in the Act always prevails over it.

05. The Rules of the Noise Pollution (Regulation and Control) Rules, 2000 the Central government, in exercise of powers conferred by clause (ii) of Sub-section 2 of section 3, sub-section (1) and clause (b) of sub-section 2 of section 6 and section 25 of the Environment Protection Act read with Rule 5 of the Environment Protection Rules, 1986, made the Rules for the

regulation and the control of noise producing. Therefore, the Rules, with no doubt, prevails over the D.O. issued by Home department.

06. The present complaint is instituted by Assistant Police Commissioner who is definitely not below the rank of Deputy Superintendent of Police and a designated authority as per Rule 2(c) of the Rules. Therefore, the complaint has been filed by competent designated authority.

07. The complainant raised various factual aspects that at the time of alleged offence there were several speakers having high volume were playing therefore, it cannot be said that it is the speakers of the accused had broken the limit of noise pollution. On these factual aspects the accused cannot be discharged at the threshold. What section 245(1) of the Code speaks that after taking evidence into consideration, which if not rebutted, no case is made out against an accused which would warrant his conviction. Whatever the factual aspects stated by the complainant in evidence Exh. 19, cannot be said that if those are unrebutted, the conviction of accused would not warrant. By taking into consideration the evidence, which is unrebutted, there should be no other conclusion than the acquittal of the accused should be made, in that case only discharge to an accused can be given under the said section. That cannot be found in the present case.

08. The accused then submitted that as per section 19 of

the Environment Protection Act ('the Act' in short) 60 days' clear notice shall be given before initiation of legal proceeding, but the complainant has given only seven day's notice Exh. 21 and 22. In cross-examination the said fact is admitted by the complainant Exh. 19. The question arises whether mandate of 60 days' notice as enshrined in section 19 of the Act is applicable to the complaint filed by an authority designated under the Act. Here I would like to reproduce section 19 of the Act thus, :-

19. Cognizance of offences *No court shall take cognizance of any offence under this Act except on a complaint made by*

(a) the Central Government or any authority or officer authorised in this behalf by that Government; or

(b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as aforesaid.

09. The said section speaks about cognizance of offences. It is divided in two parts. In first part it speaks about a court cannot take cognizance of offence under this Act except on complaint made by Central government or any authority authorized in this behalf by that government. The second part speaks about initiation of legal proceeding by any private person and precondition mentioned for the initiation of legal proceeding by the private person that he shall give notice to the Central

government or the authority or officer authorized, of not less than 60 days about the alleged offence and of his intention to make a complaint.

10. From the said provision of the Act it is amply clear that if any designated authority files a complaint, a Court can take cognizance of offence and for that mandate of 60 days' notice is not applicable. However, situation differs if a private person intends to lodge complaint. In that case that private person has to give 60 days' notice to the Central government or any officer authorized by the government. Notice of 60 days is *sine qua non* for initiation of legal proceeding by a private person and that too the government or designated authority and not to the accused. The present complaint in hand is filed by designated authority i.e. Assistant Commissioner of Police therefore, there is no need of issuing notice of 60 days to the accused, vide section 19 of the Act.

11. By taking into consideration all these aspects, I do not find any ground to discharge the accused as prayed for by him. In the result, I pass the following order.

:: ORDER ::

Proceed to frame charge against the accused vide section 246(1) of the Code of Criminal Procedure.

Alibag.
Date : 17/10/2022

(S.W. Ugale)
Chief Judicial Magistrate,
Raigad Alibag